

**STAFF REPORT  
ZONING BOARD OF ADJUSTMENT**

**Thursday, November 19, 2020  
9:00 a.m.**

**Variance Request #2020-002**

**General Information**

Name of Applicant/Owner:	Kathy Kyle 926 Smelter Ave. NW Great Falls, MT 59404
Requested Action:	Variance from the Cascade County Zoning Regulations ("CCZR") § 7.1.0.3 (2) Residential Front Yard Setback
Geo Code:	02-3015-03-1-14-52-0000
Parcel Number:	0002400850
Legal Description:	NE ¼ NE ¼ of Section 3, Township 20 N, Range 3 E ("Subject Property")
Existing Zoning:	Urban Residential ("UR")
Surrounding Zoning:	North: UR South: UR East: UR West: UR
Current Land Use:	Residential
Applicable Regulations:	CCZR §§ 7.1.0.3 (2) & 9.5

**Special Information**

1. Section 7.1.0.3 (2) of the Cascade County Zoning Regulations provides the following required setbacks for front yards in Residential Districts:  
  
Front Yard: "The front yard shall not have a depth of less than thirty (30) feet."
2. The following definitions are taken from the Cascade County Zoning Regulations:

**VARIANCE**

*"A variance is a relaxation of the terms of these regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship. As used in these regulations, a variance is authorized only for height, area, and size of structure, size of yards and open spaces, signage, landscaping, or as*

*otherwise specifically provided for in these regulations. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or adjoining zoning districts."*

Yard, Front

*"An open and unoccupied space on the same lot with the main building extending the full width of the lot, situated between the street line and the front line of the building, projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the street property line."*

3. CCZR § 9.5.4 states that "The concurring vote of 3 members shall be necessary to approve a variance. (MCA)76-2-224."
4. Kathy Kyle is the legal owner of the property.
5. The property is in the UR Zoned District and is subject to CCZR § 7.1.0.3, yard requirements
6. Currently, located on the West side of the property is a residential building, drainfield, and an area reserved as the replacement drainfield. Please see attached E.Q. # 20-2297 Site Plan.
7. The Applicant has applied for a Location/ Conformance Permit for a garage ("proposed structure") to be built on her property at 926 Smelter Avenue NW.
8. The Applicant requested minor variance approval from the Zoning Administrator, which was denied on October 15, 2020 due to the Applicant's inability to obtain all adjacent property owners' signature consenting to the minor variance as required by CCZR § 9.4.
9. Pursuant to CCZR § 9.4, the denial by the Zoning Administrator of an application involving a minor deviation shall not prohibit or affect the right of the Applicant to file an application for a variance with the ZBOA.
10. Legal Notice of the Application and the public hearing was published in the Great Falls Tribune on November 8, 2020 and November 15, 2020.
11. The property is not located in a regulated flood zone.
12. The property is located within the Military Overlay District known as MOD-F Outer Horizontal Surface where structures shall not be greater than 500 feet in height<sup>1</sup>.
13. Mailing to surrounding property owners and interested agencies were sent on November 9, 2020.

---

<sup>1</sup> CCZR § 16.1: "height limits are based on the elevation of the helicopter runway at Malmstrom (3,526 ft.) which is based on the North American Vertical Datum of 1988 (NAVD 88)."

14. Based on the Applicants site plan, the proposed garage will be placed 8 feet away from the front property line, 8 feet from the side property line, and well over 10 feet from the rear property line.

### **Analysis & Findings of Fact**

CCZR § 9.5.2 states “A dimensional variance shall only be granted when the evidence shows and a finding can be made that each of the following conditions exists:”

**(1) The variance is not contrary to the public interest.**

**Applicant: This is an irregular piece of property and we are trying to utilize it to our best use. This property is made in levels dropping 20 to 25 ft end to end so the drainage flows unobstructed. It was all done by an engineer**

*Staff: Only the Northeastern corner of this parcel's front property line directly borders Smelter Avenue NW. The remaining length borders the parcels of two adjacent property owners. The proposed structure will be near the portion of the front property line that is lined with vegetation. Based on the Site Map provided in the application material, the proposed structure will be placed 8 feet from the front property line, 106 feet from the Northeastern corner adjacent to Smelter Avenue NW, and 8 feet from the side property line. The rear property line to the proposed structure is well over the required 10 feet minimum setback. With the majority of the front property line not directly adjacent to Smelter Avenue NW and the vegetation along the property line that could act as a natural buffer, this variance would not be contrary to the public interest.*

**(2) A literal enforcement would result in an unnecessary hardship, owing to conditions unique to the property.**

**Applicant: Because it is a irregular size piece of land we are trying to build a garage to store our vehicles and make the best use of the land, that we can. Because of the drainage we are trying to keep everything going to the holding pond, this would also be an economic hardship for us, to put any more money into the property.**

*Staff: Due to the irregular three sided shape of this parcel, the residential building, drainfield and replacement drainfield on the West side of this property, and the graduated nature of this property to account for drainage, the applicant must place the proposed structure on the East side of this parcel. This poses an unnecessary hardship on the applicant in terms of meeting the 30 feet front yard setback.*

**(3) The spirit of this Section would be observed and substantial justice done by granting the variance.**

**Applicant: This is a beautiful piece of land and we don't want to change the views or landscaping. This would also be a way not to destroy any of the drainage.**

*Staff: This is an oddly shaped parcel and does not completely fall in line with the square or rectangular parcels we are used to seeing. The majority of the front property line acts as more of a side yard, where an 8 feet residential setback would be conforming. The Northeastern corner that borders Smelter Avenue NW acts as more of a front property point, where the proposed*

*structure will be placed 106 feet. The Planning Department agrees that the spirit of this section would be observed, and substantial justice done by granting this variance.*

**Motions:**

The following motions are provided for the Board's consideration:

1. "I move that the Board **deny** the Applicant's requested Variance from Cascade County Zoning Regulations § 7.1.0.3 (2) stating "The front yard shall not have a depth of less than thirty (30) feet" on the property at, 926 Smelter Ave. NW, NE ¼ NE ¼ of Section 3, Township 20 N, Range 3 E, Cascade County, MT."

or

2. "I move that the Board adopt the Staff Report and Findings of Fact and **approve** the Applicant's requested Variance from Cascade County Zoning Regulations § 7.1.0.3 (2) stating "The front yard shall not have a depth of less than thirty (30) feet" on the property at, 926 Smelter Ave. NW, NE ¼ NE ¼ of Section 3, Township 20 N, Range 3 E, Cascade County, MT, subject to the following conditions:
  - a. The Applicant will obtain all other necessary federal, state, and local permits and abide by all applicable regulations.

Attachments:

1. Variance Application
2. Location/ Conformance Application
3. Site Plan
4. Vicinity Map
5. Zoning Map
6. E.Q. # 20-2297 Site Plan
7. CCZR §§ 7.1.0.3 (2) & 9.5